

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1317-JLH-SRF
)	
IVANTIS, INC., ALCON RESEARCH)	
LLC, ALCON VISION, LLC, and ALCON)	
INC.,)	
)	
Defendants.)	

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO AMEND THE
JUDGMENT TO HOLD CLAIMS 8, 24, AND 58 OF THE '443 PATENT ARE
INVALID FOR OBVIOUSNESS-TYPE DOUBLE PATENTING**

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Dated: August 20, 2024

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I. The Federal Circuit’s August 13, 2024 *Allergan* Decision

After Sight filed its Opposition, the Federal Circuit issued a precedential opinion in *Allergan USA, Inc. v. MSN Lab’ys Private Ltd.*, — F.4th —, No. 2024-1061, 2024 WL 3763599 (Fed. Cir. Aug. 13, 2024). *Allergan* holds “a first-filed, first-issued, later expiring claim” cannot “be invalidated by a later-filed, later-issued, earlier-expiring reference claim having a common priority date.” *Id.* at *4. The time for seeking rehearing or *certiorari* has not expired and Defendants maintain the decision is inconsistent with precedent and should be modified or reversed. *E.g., id.* at *7 (“We acknowledge Sun’s position that our holding in *Gilead* appears to apply here....”). But absent alteration, *Allergan* precludes this Court granting Defendants’ motion.

II. Sight’s Arguments on the Merits Fail

Sight cannot tell the PTO its claims are patentably indistinct, then tell this Court they are not obvious variants. *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1360 (Fed. Cir. 2017); *Sherwin-Williams Co. v. PPG Indus., Inc.*, No. 2022-2059, 2024 WL 3534113, at *7-9 (Fed. Cir. Jul. 25, 2024) (applying judicial estoppel). Sight argues it merely noted the Examiner’s OTDP finding. D.I. 532 at 3. But Sight (1) pressed “[t]he similar scope of the claims of the ’742...compared to the ’443 patent,” (2) charted similarities, *and* (3) cited that finding. D.I. 523-1, 19-20. Sight abandoned its lame “kit” argument, but its three new arguments fare no better. D.I. 532 at 4. Schlemm’s canal is “circular,” D.I. 523-2, 2:35-36, so a device with length along the canal will extend “circumferentially,” per the construction of “30% of C” and as required by both patents. D.I. 521, 1; D.I. 287, 1. Sight defined “Maintain the patency” similarly to the construction of “substantial interference.” *Cf. id. with* D.I. 523-2, 7:27-33; *id.*, 7:2-21, Figs. 4A-B (both require meshwork and channel fluid flow, so fluid must “traverse the canal”). And Schlemm’s canal is “[l]ocated on the outer peripheral surface of [the] meshwork” (*id.*, 6:30-61, Fig. 3), so a support extending “out of Schlemm’s canal” must go into or through the meshwork.

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